

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 350 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?
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COMMISSIONER OF INCOME TAX

Versus

RATILAL MOHANLAL CHEVLI

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Appearance:

MR M.J. THAKORE for MR MANISH R BHATT for Petitioner  
MR. D.A. MEHTA, MR. R.K. PATEL AND MR. B.D. KARIA,  
Advocates for MR. K.C.PATEL for the respondent.

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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE R.BALIA.

Date of decision: 09/12/96

ORAL JUDGEMENT (Per Rajesh Balia,J.)

At the instance of the Commissioner of Income Tax, Surat, the Income Tax Appellate Tribunal has referred the following question of law arising out of its order No.ITA 2462/Ahd/81 relating to assessment year 1977-78.

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the major payments made by the assessee to its partners were not liable to be disallowed under the provisions of Section 40(b) of the I.T. Act, 1961?"

Both the learned Counsel for the parties state that answer to the aforesaid question is squarely covered by the ratio of decision in Commissioner of Income Tax Vs. Yoganand Textiles, reported in 202 ITR 869 and it has to be answered in the negative - that is to say, in favour of the Revenue and against the assessee. Following the aforesaid decision, we answer the aforesaid question in the negative against the assessee.

The question whether the payment of interest made by the firm to an individual who is a partner in a firm in a representative capacity shall not be taken into account for the purpose of the said clause u/s 40(b) is decided in the aforesaid case. Since there is no material to come to the conclusion on this aspect, it will be open for the Tribunal to decide the same in the light of observations made in the aforesaid decision of Textiles (202 ITR 869).

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